

Message Text

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ORIGIN EB-07

INFO OCT-01 EA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 PM-03 H-02 L-03 NSC-05

PA-01 PRS-01 SP-02 SS-15 USIA-06 /061 R

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO

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E.O. 11652: N/A

TAGS: EAIR, JA

SUBJECT: CIVAIR - AIRLINE COMMISSION RATE DISPUTE

REF: TOKYO 8852, 8952

1. EMBASSY'S INTERPRETATION OF US POSITION IS ESSENTIALLY CORRECT, BUT IN ORDER TO AVOID ANY MISUNDERSTANDING WE WILL SPELL IT OUT IN CONTEXT CURRENT SITUATION IN JAPAN.

A. COMMISSIONS ARE NOT "RATES" WITHIN MEANING OF ARTICLE 13 OF US-JAPAN CIVIL AIR TRANSPORT AGREEMENT. HENCE JCAB CANNOT, IN OUR VIEW, BASE REQUIREMENT FILING OF COMMISSION RATES ON THAT AGREEMENT OR ATTEMPT TO CONTROL RATES PURSUANT TO IT.

B. WHETHER GOJ CAN REQUIRE FILING OF AND CONTROL COMMISSION RATES PAID TO AGENTS IN JAPAN IS THEREFORE A QUESTION

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OF JAPANESE LAW. PAN AM IS FREE TO CHALLENGE GOJ AT ITS

OWN RISK EITHER BY REFUSING TO COMPLY OR BY PURSUING
MATTER IN JAPANESE COURTS.

C. HOWEVER, IF GOJ SHOULD ATTEMPT TO DEPRIVE PAN AM OF ITS
RIGHTS UNDER BILATERAL AGREEMENT (SUCH AS BY REVOKING PART
OR ALL OF ITS OPERATING PERMITS), USG BELIEVES SUCH ACTION

WOULD BE VIOLATION OF AGREEMENT BECAUSE IT WOULD DEPRIVE
ONE OF PARTIES OF THE BENEFITS OF THE AGREEMENT WITHOUT
ANY BASIS IN AGREEMENT FOR DOING SO.

2. DEPARTMENT HAS NO OBJECTION IN PRINCIPLE TO EMBASSY
ADVISING GOJ OF US VIEWS BUT WE SUGGEST THIS BE DONE

INITIALLY IN LOW KEY SINCE, AS WE UNDERSTAND SITUATION,
GOJ HAS NOT EXPLICITLY ASSERTED THAT CIVIL AIR TRANSPORT
AGREEMENT IS APPLICABLE. SISCO

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